

This letter concerns the resale of telecommunications. See 86 Ill. Adm. Code 495.110.
(This is a PLR.)

June 28, 2004

Dear Xxxxx:

This letter is in response to your letter to Ms. Gorden dated June 24, 2003 in which you request information. We apologize for the delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

On behalf of our client, 'Company', we respectfully request the Illinois Department of Revenue ('the Department') to issue a private letter ruling pursuant to 2 Ill. Adm. Code Section 1200.110 with respect to the following factual situation.

General Information

1. Enclosed please find an original Form IL-2848 Power of Attorney authorizing FIRM to represent Company, before the Department of Revenue.
2. This PLR is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the sales tax consequences of the actual business practices of Company.

3. Company is not currently under audit with the Department with regard to this issue, nor is the Company engaged in litigation with the Department in regard to this or any other tax matter.
4. The Company submitted a private letter ruling request on the issue of whether they were considered a telecommunications retailer under Illinois law and received a GIL on July 26, 2001, a copy of which is attached to this letter. At the time of that ruling request, Company was reselling telecommunications services to related parties at a mark up. Company now resells these services to related parties at cost. The Company is requesting this private letter ruling to confirm that their current telecom tax filing methodology is permissible under Illinois law following prior communications with the Filings Division and the Legal Division of the Department.
5. Company requests that certain information be deleted from the PLR prior to dissemination to others. Company requests that its name, address, location of its headquarters, description of products being purchased and the name of its representative be deleted.
6. Company knows of no authority contrary to the authorities referred to and cited below.

Statement of Material Fact

Company Background

Company is a wholly owned U.S. subsidiary of BUSINESS ('Parent'). COMPANY provides local telecommunication and network consulting services to the Parent. Parent provides telecommunication and network services to facilitate trading for the members of XYZ.

COMPANY purchases telecommunications services from a variety of vendors and pays the telecommunications excise tax ('TET') to those vendors. All of these telecommunications services are billed to COMPANY's CITY location and either originate or terminate in CITY. COMPANY then provides a detailed invoice to the Parent that breaks out the telecommunications services being resold to Parent and other consulting services at cost. The Parent then bundles the line charges and network support charges into a single access charge which it collects from its customers. The Parent invoices its customers on a per line basis for access. The customers then charge their members for the access service.

Current Filing Methodology

Currently, COMPANY files an RT-2 Telecommunications Excise Tax Return with the State of Illinois which indicates the total TET due for the line charges resold to the Parent and taking a credit for the TET already paid to vendors (the 'current filing methodology'). The net effect of the credit is that each RT-2 is a zero return. COMPANY arrived at this arrangement after speaking to a representative from the Miscellaneous Taxes division in late 2001.

In October of 2002, this same representative informed COMPANY that they could no longer file their TET returns using the above described methodology. He informed COMPANY that it was a reseller of telecommunications services and not a retailer, and should therefore present resale certificates to its vendors and refrain from filing a TET return. Not stated by the representative, but implicit in this matter, is the need for COMPANY to collect resale certificates from the Parent, and so on, until a taxable sale for use is made.

Additionally, COMPANY, from a corporate family standpoint, wants to insure that its taxes are paid on the appropriate base amount and that its invoicing and customer relations are not affected by any change in its filing methodology for the telecommunications excise tax in Illinois.

We contacted the Department and spoke to you in order to determine whether COMPANY could in fact continue using the current filing methodology.

The Filings division has since informed COMPANY that they should file on an annual basis rather than a monthly basis.

Ruling Request

Company respectfully requests a binding PLR from the Department confirming that COMPANY's filing methodology, which involves paying telecommunications tax to its vendors and claiming credit on their RT-2, is permissible under Illinois law and regulations.

Discussion

It is our understanding, based on conversations with you that, while issuing resale certificates to the vendors was the preferred methodology for TET compliance in Illinois, that the method being used by COMPANY was also technically within compliance under Illinois law. In our conversations, we also discussed your concern that the process of claiming a credit for taxes paid could potentially cause a problem with allocation of local taxes and credits to municipalities. We concluded that since only one possible taxing jurisdiction, CITY, was involved, the allocation of the credits claimed on the RT-2 would not ultimately cause such a problem.

Conclusions

We respectfully request that the Department issue a ruling confirming, based on the facts presented above, that COMPANY's current filing methodology is permissible under Illinois law and that COMPANY can continue to employ this methodology on its future RT-2 returns.

If the Department cannot so conclude, I request that the Department contact me to determine what additional information is required or allow the taxpayer to rescind the ruling request. Please contact me with any questions or to schedule a meeting to discuss any aspect of this ruling request. We appreciate your response on these issues. Thank you.

DEPARTMENT'S RESPONSE:

We believe that the method for reporting and paying Telecommunications Excise Tax to the Department described in your letter is incorrect. You referenced a telephone conversation with PERSON regarding this matter. Her recollection of the conversation is that the subsequent sale of the telecommunications by PARENT to the XYZ was not discussed.

You have stated that COMPANY "provides a detailed invoice to the Parent that breaks out the telecommunications services being resold to Parent." "The Parent then bundles the line charges and support charges into a single access charge which it collects from its customers, XYZ." You have also stated that PARENT invoices its customers on a per line basis for access and those customers then charge their members for the access service.

The retail sale of telecommunications is being made either by your client's parent company, PARENT, to XYZ or alternatively, by XYZ to its customers. Under the facts set out in your letter, either PARENT or XYZ is responsible for filing returns with the Department and collecting Telecommunications Excise Tax from retail customers. In either instance, COMPANY is acting as a reseller of telecommunications.

If COMPANY makes sales of telecommunications only for resale, then it will need to register with the Department as a reseller of telecommunications so that it can provide certificates of resale to its suppliers who make both sales for resale and sales for use or consumption. As long as COMPANY makes sales of telecommunications only for resale, it does not have to file returns with the Department showing those sales for resale or retain certificates of resale for the sale of those telecommunications.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk